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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,857	02/05/2002	Mats Allers	1774/OK258	2347

7590 08/25/2005

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EXAMINER
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MAIORINO, ROZ

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,857

Applicant(s)

ALLERS ET AL.

Examiner

Roz Maiorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 11-68 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 08/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Method of Group I and Species F and AA in the reply filed on 1/3/05 and 5/26/05 are acknowledged.
2. Claims 11-68 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 1-3-05 and 5/26/2005.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent NO 6830581 to Magers.

Marges teaches a method for brain hypothermia, said method comprising, in a first phase to enable an early and fast inset of the hypothermia, the steps of: providing a container with an infusion solution having a first temperature and a venous infusion catheter connected to an outlet of said container, said venous infusion catheter having an infusion solution lumen; percutaneously inserting a distal end of said venous infusion catheter into a peripheral vein; cooling the infusion solution to a second temperature lower than said first temperature; and infusing a first amount of said cold infusion solution into said vein via the infusion solution lumen of said venous infusion catheter shortly after said cooling, to enable the cold infusion solution to cool the blood flowing to the brain while avoiding air bubbles arising in the infusion solution.

4. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pub NO 2001/0011184 A1 to Dobak, III et al.

Dobak teaches a method for brain hypothermia, said method comprising, in a first phase to enable an early and fast inset of the hypothermia, the steps of: providing

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a container with an infusion solution having a first temperature and a venous infusion catheter connected to an outlet of said container, said venous infusion catheter having an infusion solution lumen; percutaneously inserting a distal end of said venous infusion catheter into a peripheral vein; cooling the infusion solution to a second temperature lower than said first temperature; and infusing a first amount of said cold infusion solution into said vein via the infusion solution lumen of said venous infusion catheter shortly after said cooling, to enable the cold infusion solution to cool the blood flowing to the brain while avoiding air bubbles arising in the infusion solution.

5. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pub NO 2003/0088299 A1 to Magers et al.

Magers teaches a method for brain hypothermia, said method comprising, in a first phase to enable an early and fast onset of the hypothermia, the steps of: providing a container with an infusion solution having a first temperature and a venous infusion catheter connected to an outlet of said container, said venous infusion catheter having an infusion solution lumen; percutaneously inserting a distal end of said venous infusion catheter into a peripheral vein; cooling the infusion solution to a second temperature lower than said first temperature; and infusing a first amount of said cold infusion solution into said vein via the infusion solution lumen of said venous infusion catheter shortly after said cooling, to enable the cold infusion solution to cool the blood flowing to the brain while avoiding air bubbles arising in the infusion solution.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Maiorino whose telephone number is 571- 272-4960. The examiner can normally be reached on 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4377. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RM



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